

Message Text

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E.O. 11652: NA

TAGS: ETRD, GATT, EEC

SUBJECT: MTN EC POSITION ON DRAFT STANDARDS CODE

REFS: A) STATE 158363 (NOTAL)

B) MTN GENEVA 4735 (NOTAL)

C) EC BRUSSELS A-239, JUNE 23, 1975

1. BEGIN SUMMARY: UNDER THE ROME TREATY THE EC HAS NO
AUTHORITY OVER NOR RESPONSIBILITY FOR THE STANDARDS
ACTIVITIES OF THE MEMBER STATES UNLESS THE EC HAS PRE-
EMPTED A PARTICULAR FIELD BY HAVING A COMMUNITY STANDARD.
NOR DOES IT HAVE AUTHORITY OVER NATIONAL STANDARDS BODIES.
ITS OBLIGATIONS VIS-A-VIS THE PROPOSED STANDARDS CODE
WOULD BE LIMITED TO ITS OWN DIRECTIVES. THE MEMBER STATES,
ALL OF WHOM ARE EXPECTED TO ADHERE TO THE CODE, WOULD BE
RESPONSIBLE FOR THEIR NATIONAL STANDARDS. THE EC REPRESENTATIVES
CONTEND THAT THE EC'S OBLIGATIONS PLUS
THOSE OF THE MEMBER STATES, ALMOST ALL WITH UNITARY
GOVERNMENT, ARE GREATER THAN THOSE OF FEDERAL-TYPE
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GOVERNMENTS. THEY ALSO CLAIM THAT THE MEMBER

STATES HAVE GREATER LEVERAGE OVER THEIR NATIONAL STANDARDS-MAKING BODIES THAN THE US HAS OVER FEDERAL REGULATORY AGENCIES AND PRIVATE STANDARDS-MAKING BODIES, AND WOULD BE EXPECTED TO BE MORE EFFECTIVE WHEN USING "BEST EFFORTS" AS CALLED FOR IN THE CODE. THE SO-CALLED IMBALANCE BETWEEN THE US ON THE ONE HAND AND THE EC AND ITS MEMBER STATES ON THE OTHER, HAS NOTHING TO DO WITH THE OBLIGATIONS OF THE EC AS A COMMUNITY NOR ITS COMPETENCE UNDER THE TREATY OF ROME. END SUMMARY.

2. IN RESPONSE TO REFTELS MISSION OFFICERS HAVE SPOKEN WITH SEVERAL EC COMMISSION OFFICIALS IN ORDER TO DETERMINE EC RESPONSIBILITIES AND OBLIGATIONS UNDER THE PROPOSED STANDARDS CODE. OUR ANSWERS TO THE QUESTIONS RAISED IN REFTEL A ARE BASED PRIMARILY ON A JUNE 8 MEETING WITH SCHLOESSER, THE EC COMMISSION DIRECTOR RESPONSIBLE FOR STANDARDS.

3. ACCORDING TO SCHLOESSER, THE COMMISSION DOES NOT REPEAT NOT HAVE AUTHORITY OVER MEMBER STATE NATIONAL MANDATORY STANDARDS NOT RELATED TO OR AFFECTED BY COMMUNITY-WIDE STANDARDS ALTHOUGH A CLEAR CASE OF "PROTECTIONIST" NATIONAL STANDARDS WOULD RAISE THE POSSIBILITY OF ACTION UNDER ART. 30 OF THE ROME TREATY. THERE IS A "STANDSTILL" AGREEMENT (A GENTLEMEN'S AGREEMENT) AMONG THE MEMBER STATES WHEREBY THE MEMBER STATES MUST INFORM THE EC COUNCIL OR THE EC COMMISSION IF THEY INTEND TO PASS STANDARDS LEGISLATION OR ADMINISTRATIVE REGULATIONS COVERING EITHER (A) THE PRODUCTS IN THE "GENERAL PROGRAM" (SEE REFERENCE C), OR (B) PRODUCTS OUTSIDE THE PROGRAM IF THE APPLICATION OF SUCH A NATIONAL STANDARD COULD CREATE TECHNICAL BARRIERS TO TRADE. IF WITHIN SPECIFIC PERIODS OF TIME THE COMMISSION DOES NOT PRODUCE AND THE COUNCIL APPROVE A DIRECTIVE, THE MEMBER STATE MAY APPLY ITS OWN NATIONAL STANDARD. (THE STANDSTILL AGREEMENT IS IN THE OFFICIAL JOURNAL OF THE EUROPEAN COMMUNITIES NO. C76/9 OF JUNE 17, 1969.)

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4. A COMMISSION OFFICIAL DESCRIBED A RECENT CASE SUPPORTING THE POINT OF THE COMPETENCE OF MEMBER STATES IN THE STANDARDS FIELD. THE UK NOTIFIED THE COMMISSION THAT IT WAS GOING TO PASS A STANDARD ON A PRODUCT WITHIN THE EC PROGRAM. THE COMMISSION SET UP A WORKING GROUP OF NATIONAL EXPERTS AND PROGRESS WAS MADE TOWARD ARRIVING AT AN AGREEMENT ON A DRAFT DIRECTIVE. IN SPITE OF THE EFFORTS THAT HAD BEEN MADE TO REACH A COMMON

STANDARD, FIVE MONTHS TO THE DAY FOLLOWING NOTIFICATION OF ITS INTENTION TO THE COMMISSION (THE TIME ALLOWED UNDER THE STANDSTILL AGREEMENT) THE UK EXCUSED ITSELF AND APPLIED ITS NATIONAL STANDARD.

5. SCHLOESSER OFFERED ANOTHER ANECDOTE ON THE RELATION BETWEEN MEMBER STATES AND THE COMMUNITY. THE EC COUNCIL APPROVED A DIRECTIVE ON CAN SIZES WHICH WAS OPTIONAL, I.E. CANS OF A GIVEN SIZE HAD TO BE ACCEPTED BY THE MEMBER STATES ALTHOUGH OTHER SIZES COULD BE AS WELL. GERMANY MADE THE EC SIZE THE ONLY LEGAL SIZE IN GERMANY. THE US HAD A PROBLEM WITH THE GERMAN REGULATION BUT UNDERSTOOD THE PROBLEM TO BE THE EC DIRECTIVE ON CAN SIZES. THE EC RESPONSE WAS THAT SINCE GERMANY HAD MADE THE SIZE MANDATORY, THE US SHOULD COMPLAIN TO GERMANY, NOT THE EC.

6. ACCORDING TO SCHLOESSER, THE EC HAS NO AUTHORITY OVER NATIONAL STANDARDS BODIES (E.G. AFNOR, DIN, ETC.), IN EC COUNTRIES AND CONSEQUENTLY COULD NOT EVEN UNDERTAKE "BEST EFFORTS" OBLIGATIONS. IT IS THE MEMBER STATES WHICH WOULD HAVE "BEST EFFORTS" OBLIGATIONS REGARDING SUCH BODIES.

7. SCHLOESSER SAID THE EC HAS NO AUTHORITY OVER LOCAL GOVERNMENT STANDARDS WRITING IN MEMBER GOVERNMENTS. AGAIN, IT IS THE MEMBER STATES WHICH HAVE "BEST EFFORTS" OBLIGATIONS.

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HOWEVER, AS THE EC STANDARDS PROGRAM GROWS, LOCAL GOVERNMENT STANDARDS WRITING WILL TO SOME DEGREE BE INCREASINGLY PRE-EMPTED BY EC STANDARDS. (GERMANY IS APPARENTLY THE ONLY EC COUNTRY WHERE LOCAL ((LAENDER)) STANDARDS POSE A SIGNIFICANT PROBLEM).

8. THE EC HAS NO AUTHORITY AND CANNOT UNDERTAKE "BEST EFFORTS" OBLIGATIONS TOWARD CEN AND CENELEC WHICH INCLUDE EC AND EFTA COUNTRIES, AND EVEN OTHER EUROPEAN COUNTRIES. MEMBER STATES CAN ASSUME INDIRECT "BEST EFFORTS" OBLIGATIONS TOWARD CEN AND CENELEC BECAUSE IT IS NATIONAL STANDARDS BODIES THAT BELONG TO CEN AND CENELEC.

9. WE PRESSED SCHLOESSER ON THIS POINT BECAUSE IN THE CASE OF THE EC COUNCIL DIRECTIVE ON LOW VOLTAGE ELECTRICAL EQUIPMENT (O.J. L 77/29, MARCH 26, 1973) CENELEC STANDARDS AGREED UPON BY MEMBER STATES ARE PUBLISHED IN THE OFFICIAL JOURNAL AS HARMONIZED STANDARDS. SCHLOESSER DID NOT BELIEVE THIS CHANGED THE EC'S OBLIGATIONS. (HE ALSO NOTED THAT THE LOW VOLTAGE ELECTRICAL EQUIPMENT DIRECTIVE WOULD BE THE LAST DIRECTIVE
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PERMITTING NATIONAL STANDARDS ORGANIZATIONS WORKING TOGETHER IN CENELEC TO SET SUBSEQUENT STANDARDS WITHIN THE FRAMEWORK OF A DIRECTIVE. THE GOVERNMENTS OF MEMBER STATES FEEL THEY HAD INSUFFICIENT INPUTS UNDER THIS SYSTEM.)

10. IN LIGHT OF THE LIMITED RESPONSIBILITY OF THE EC (I.E. FOR ITS OWN DIRECTIVES), WE ASKED SCHLOESSER TO EXPLAIN THE ALLEGED IMBALANCE BETWEEN EC OBLIGATIONS UNDER THE CODE AND THOSE OF THE US. HIS ANSWER WAS THREEFOLD*

A. UNDER THE CODE THE EC WOULD BE RESPONSIBLE FOR EC DIRECTIVES. MOREOVER, THE MEMBER STATES WHO WOULD ALSO BE FULL PARTICIPANTS IN THE CODE, WOULD BE RESPONSIBLE FOR "NATIONAL" STANDARDS WHICH ARE WHAT MOST OF THEM HAVE BECAUSE OF THE UNITARY NATURE OF THEIR GOVERNMENTS. ON THE OTHER HAND, THE OBLIGATIONS OF FEDERAL TYPE GOVERNMENTS (SUCH AS THE US) INVOLVE TO A LARGE EXTENT "BEST EFFORTS". SCHLOESSER CITED THE EXAMPLE OF AUSTRALIA WHERE 80-90 PERCENT OF STANDARDS ARE STATE STANDARDS AND THE ONLY OBLIGATION OF THE FEDERAL GOVERNMENT WOULD BE "BEST EFFORTS". THE PROBLEM IS THEREFORE NOT THE EXISTENCE OF THE EC OR THE ROME TREATY BUT THE UNITARY NATURE OF THE GOVERNMENTS OF MOST OF THE MEMBER STATES.

B. SCHLOESSER ARGUED THAT EUROPEAN GOVERNMENTS, ALTHOUGH THEY

DO NOT HAVE ABSOLUTE CONTROL, DO HAVE SUBSTANTIALLY MORE LEVERAGE (BUDGETARY AND ADMINISTRATIVE) THAN DOES THE US OVER THEIR NATIONAL STANDARDS-MAKING ORGANIZATIONS. THEY ARE THEREFORE IN A POSITION TO PERSUADE THESE ORGANIZATIONS TO FOLLOW THE CODE PROVISIONS. HE ADMITTED FRANKLY THAT THE COMMISSION DID NOT HAVE A CLEAR UNDERSTANDING OF THE TYPES OF PRESSURE THE US GOVERNMENT COULD EXERT ON (1) STATES, (2) FEDERAL REGULATORY BODIES AND (3) PRIVATE STANDARDS-MAKING ORGANIZATIONS. HE THOUGHT FOR EXAMPLE THAT THE FEDERAL GOVERNMENT COULD LEAN ON ANSI BUT NOT ON A.S.T.M. (AMERICAN SOCIETY OF TEST MATERIALS) AND A.S.M.I. (AMERICAN SOCIETY OF MEASURING INSTRUMENTS). IN A WORD, ADHERANTS TO THE CODE WILL EXPECT A HIGHER LEVEL OF RESULTS FROM EUROPEAN GOVERNMENTS' "BEST EFFORTS" THAN FROM THE US FEDERAL GOVERNMENT.

C. A FINAL, INDIRECT ARGUMENT IS THAT THE TENDENCY IN THE EC IS TOWARD COMMUNITY STANDARDS AND OVER TIME THE EC WILL LIMITED OFFICIAL USE

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DEVELOP A GROWING VOLUME OF MANDATORY EC STANDARDS WHICH PRE-EMPT NATIONAL AND LOCAL STANDARDS. EC STANDARDS MAY ALSO GO BEYOND THOSE LISTED IN THE "GENERAL PROGRAM" BECAUSE THE STANDSTILL AGREEMENT CITED IN PARA 3 ABOVE GETS THE EC INTO PRODUCT STANDARDS IT HAD NOT EVEN COMTEMPLATED.

11. WHERE IS THE EC STANDARDS PROGRAM AND WHERE IS IT GOING? COMMISSION OFFICIALS FEEL THAT THE PROGRAM, ALTHOUGH CONSIDERABLY BEHIND SCHEDULE IN THE EC COUNCIL, IS NOT GOING BADLY GIVEN THE PROBLEMS IN GETTING NINE COUNTRIES TO AGREE TO ANYTHING. THE FACT THAT ONLY ONE STANDARD HAS BEEN THE SUBJECT OF LEGISLATIVE OR ADMINISTRATIVE ACTION BY "ALL" MEMBER STATES OVERLOOKS THE FACT THAT LUXEMBOURG DOES NOT BOTHER WITH LEGISLATION BECAUSE IT ACCEPTS PRODUCTS APPROVED BY OTHER MEMBER STATES AND THUS ATTAINS THE SAME RESULT. A RESPECTABLE PERCENTAGE OF THE APPROVED EC COUNCIL DIRECTIVES HAVE BEEN IMPLEMENTED BY THE MAJOR STATES. ALL EC COMMISSION OFFICIALS

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FELT THE PROBLEMS OF IMPLEMENTATION HAVE FAR MORE TO DO WITH THE MEMBER STATES' ADMINISTRATIVE AND PROCEDURAL DIFFICULTIES THAN "BAD FAITH". ITALY, FOR EXAMPLE, WAS CONSIDERABLY BEHIND IN IMPLEMENTING EC AUTOMOBILE DIRECTIVES, AND, ONCE ENABLING LEGISLATION WAS FINALLY PASSED, IT BECAME THE MEMBER STATE WHICH IMPLEMENTED THE GREATEST NUMBER OF EC AUTOMOTIVE DIRECTIVES. NEVERTHELESS, THE COMMISSION IS INITIATING PROCEDURES AGAINST SEVERAL MEMBER STATES WHICH COULD ULTIMATELY END IN THE EUROPEAN COURT OF JUSTICE. COMMISSION OFFICIALS BELIEVE, HOWEVER, THE STATES WILL COMPLY WITH THE DIRECTIVES BEFORE A CASE ACTUALLY GOES TO COURT. A PERM REP CONTACT SAID THAT THE EC PROGRAM TIMETABLE FOR STANDARDS IS OVERLY OPTIMISTIC AND COULD NOT BE MET. NEVERTHELESS, THE MEMBER STATES TAKE THE "GENERAL PROGRAM" QUITE SERIOUSLY.

12. WE ASKED SCHLOESSER IF THE COMMISSION WILL BE ASKED BY THE MEMBER STATES TO INFORM THE GATT SECRETARIAT OF THEIR NATIONAL STANDARDS SINCE THE MEMBER STATES, UNDER THE STANDSTILL AGREEMENT, ALREADY NOTIFY THE COMMISSION OF PROPOSED MANDATORY STANDARDS. HE SAID THIS WAS AN INTERNAL EC PROBLEM BUT DOUBTED LIMITED OFFICIAL USE

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IF SUCH A PROCEDURE WOULD BE FOLLOWED NOR THAT IT WOULD RELIEVE THE MEMBER STATES OF THEIR OBLIGATIONS UNDER THE CODE.
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Message Attributes

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